

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6191**

**BILL NUMBER:** HB 1027

**NOTE PREPARED:** Nov 15, 2002

**BILL AMENDED:**

**SUBJECT:** Bail and Bail Procedure.

**FIRST AUTHOR:** Rep. Smith V

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**    **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

(A) It provides that if a defendant was admitted to bail by depositing cash or securities in an amount not less than 10% of the bail and failed to appear as ordered, the court must declare the cash or securities and the remainder of the bail forfeited. It allows judgment to be withheld for 120 days. It provides that, if the cash or securities and the remainder of the bail have been forfeited or the 120-day period has expired, the court: (1) may not release the defendant on personal recognizance; (2) may not set bail for the rearrest of the defendant at an amount less than the original bail; and (3) may readmit the defendant to bail only under certain circumstances.

(B) The bill provides that, if a defendant executed a bail bond, deposited cash or securities in an amount equal to bail, or executed a bond secured by real estate and failed to appear as ordered, the court must issue a warrant for the defendant's arrest and declare the bail bond forfeited. It requires the clerk to mail notice of forfeiture to the defendant immediately. It provides that, unless the court finds that there was justification for the defendant's failure to appear within 120 days after the date the notice was mailed, the court must immediately enter judgment against the defendant for the amount of the bail the day after the 120-day period expires.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** *Provision A* potentially increases the amount of revenue deposited in the

Common School Fund. Under current law, defendants admitted to bail by depositing 10% of the bond with the clerk of the court and who fail to appear in court, will forfeit the 10% deposit. As proposed, defendants would forfeit both the 10% deposit and the remaining bail that would have had to be deposited.

As an example under current law, a defendant who has bail set at \$1,000 could be permitted by the court to deposit 10% (or \$100) of the bail amount with the clerk of the court. If the defendant fails to appear in court when ordered to do so, the clerk of the court retains the 10% deposit until it determines whether the crime victim files a civil lawsuit against the defendant based on the crime for which the defendant has been accused. If no civil lawsuit is filed, then the 10% deposit is forfeited and deposited in the Common School Fund.

As proposed, if the defendant fails to appear in court, both the 10% deposit (\$100) and the remaining bail (in this case \$900) would be available in a civil lawsuit. The defendant would be responsible for producing the remaining \$900. If no civil lawsuit is filed, then both the 10% deposit and the remaining bail would be forfeited and deposited in the Common School Fund.

The number of civil actions that result from crime victims filing claims against alleged perpetrators is not known.

**Explanation of Local Expenditures:** *Provision A:* Under current law, defendants who are released after depositing 10% of the bail with the clerk of the court and who fail to appear for a court hearing are still eligible for release under the bail posted. This bill could increase the number of criminal defendants who would remain in jail prior to trial if they cannot afford a bail bond. The Indiana Sheriffs Association estimates that the daily cost of incarcerating one person in jail is \$44.

**Explanation of Local Revenues:** Any effects from this bill will depend on the number of criminal defendants who fail to appear in court when ordered to do so. The percentage of cases where criminal defendants fail to appear in court hearings is not known. As proposed, criminal defendants failing to appear at a scheduled court hearing would be required to either execute a bail bond, deposit cash or securities in an amount equal to bail, or execute a bond secured by real estate.

*Background Information:* If a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund. This bill potentially increases revenue to the Late Surrender Fee if more criminal defendants use a bail bondsman and fail to appear in court due to the potential increase in number of bail bonds issued.

Local governments reported receiving the following amounts from the Late Surrender Fee between CY 1997 and CY 2001.

<b>CY</b>	<b>Trial Courts</b>	<b>City and Town Courts</b>	<b>Total Revenue Collected</b>
1997	\$804,525	\$2,640	\$807,165
1998	\$739,321	\$10,528	\$749,849
1999	\$820,023	\$11,665	\$831,688
2000	\$1,041,349	\$16,568	\$1,057,917
2001	\$588,100	\$128,923	\$717,023

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts, county jails.

**Information Sources:** Indiana Judicial Service Reports, 1997 through 2001.

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